

INFORMATION FOR SERVICE BY PUBLICATION TO START A CIVIL ACTION

IMPORTANT! READ BEFORE USING THIS INFORMATION

ND Legal Self Help Center staff and Court employees cannot help you fill out forms. If you are unsure how to proceed, you should consult a lawyer.

This information covers basic procedure for service by publication to start a civil action and is not a complete statement of the law. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. Use at your own risk.

To protect your rights, carefully read this information and any instructions to which you are referred.

You may go to court without a lawyer, but you must abide by the state or federal laws that apply to your civil action, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Rules of Evidence, North Dakota Administrative Rules and Orders, and any local court rules. Links to the rules and state laws can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov/ndlshc.

****Disclaimer: The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota courts. The information provided by the Center is not intended for legal advice but only a general guide to the court process. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state.****

Service of a summons starts a civil action in North Dakota. This is also called service of process. A copy of the complaint or petition must be served with the summons.

Everything filed, or intended to be filed, with the court must be served on all parties.

Proof of service tells the court how and when the parties were served and the documents that were served. The document showing proof of service must be filed with the clerk of court. If proof of service is not filed, the court will not take action on your case.

You must follow the service rules in the North Dakota Rules of Civil Procedure available online at www.ndcourts.gov/rules. See Rule 4 to start a civil action. You are responsible for making sure documents are served correctly.

Rule 4(e) of the North Dakota Rules of Civil Procedure governs service by publication when starting a civil action. Review the rule carefully.

In general, the person starting the civil action (Plaintiff/Petitioner) must arrange for service of the summons and complaint/petition in one of three ways.

1. By Personal Service.
2. By Mail.
3. By Obtaining the Other Party's Signature.

Review Rule 4 for the specific requirements for each type of service. Information about service to start a civil action and blank proof of service forms are available at the ND Legal Self Help Center website by clicking on the [Service](#) link.

If you are unable to locate the other party or parties and cannot provide proof of service by any of the three options above, you may be able to serve the summons by publication. (See Rule 4(e) of the North Dakota Rules of Civil Procedure for the requirements for service by publication.)

NOTE: Except in an action for divorce, Defendants/Respondents who are served by publication may be permitted to defend the action up to 3 years after entry of judgment, if the Defendant/Respondent meets certain requirements.

Service by publication is not available in all types of civil actions. For example, service by publication is not an option in Small Claims Court actions. Review the law that applies to your civil action to determine if service by publication is allowed and if the law changes the requirements for service by publication.

Service by publication on a Defendant/Respondent is only permitted when:

1. The claim for relief is based on one or more grounds for the exercise of personal jurisdiction under Rule 4(b)(2) of the North Dakota Rules of Civil Procedure;
2. The subject of the action is real or personal property in North Dakota, and:
 - a. The Defendant/Respondent has or claims a lien or other interest in the property, whether vested or contingent,
 - b. The relief demanded against the defendant consists wholly or partly in excluding the Defendant/Respondent from that lien or interest or in defining, regulating, or limiting that lien or interest, or
 - c. the action otherwise affects the title to the property;

3. The action is to foreclose a mortgage, cancel a contract for sale, or to enforce a lien on or a security interest in real or personal property in North Dakota;
4. The Plaintiff/Petitioner has acquired a lien on the Defendant's/Respondent's property or credits within this state by attachment, garnishment, or other judicial processes and the property or credit is the subject matter of the litigation or the underlying claim for relief relates to the property or credits;
5. The action is for divorce, separation, or annulment of a marriage of a North Dakota resident;
6. The action is to determine parenting rights and responsibilities of an individual subject to the court's jurisdiction; **or**
7. The action is to award, partition, condemn, or escheat real or personal property in North Dakota.

If you decide that you meet the requirements of Rule 4(e) and can serve your summons by publication, and the law that applies to your civil action DOES NOT change the requirements for service by publication, follow these six steps:

Step One: Use diligent efforts to locate an address to serve the Defendant/Respondent. Keep track of your efforts and the results, including dates.

Following are examples of ways to find people for service:

- Last known address.
 - Contact the U.S. Post Office for information on how to determine if the defendant left a forwarding address.
- Friends, family, employers.
- Online search engines.
- Government entities, such as Department of Motor Vehicles or County Recorder.
- North Dakota business entity search, available at the ND Secretary of State website.
- Social Security Death Index.
- Utility companies.
- Social networking websites.
- Reverse directories.
 - A reverse directory allows someone to search by phone number to find an address. (Your local public library may have access to reverse directories.)

Step Two: Attempt to serve the Defendant/Respondent by personal service, by mail or by obtaining the other party's signature. Keep records of your attempts and the results, including dates.

Step Three: File the complaint, an affidavit for service by publication, and proof of your attempts to serve the Defendant/Respondent with the clerk of court.

- The Complaint:
The complaint must set forth a claim in favor of the Plaintiff/Petition and against the Defendant(s)/Respondent(s). The complaint must be based on one or more situations where service by publication is permitted. (See above.)
- The Affidavit for Service by Publication:
The affidavit must be executed by the Plaintiff/Petition or the Plaintiff's/Petitioner's attorney.

The affidavit includes the following:

- A statement that specifically tells the court which of the situations the complaint is based upon, where service by publication is permitted (See above);
- A detailed statement or statements explaining your diligent efforts to serve the defendant(s); **and**
- The affidavit must state one or more of the following:
 - That after diligent inquiry, personal service of the summons cannot be made on the Defendant/Respondent in North Dakota to the best knowledge, information, and belief of the affiant;
 - That the Defendant/Respondent is a domestic corporation that has forfeited its charter or right to do business in this state or has failed to file its annual report as required by law;
 - That the Defendant/Respondent is a domestic or foreign corporation and has no officer, director, superintendent, managing agent, business agent, or other agent authorized by appointment or by law on whom service of process can be made on its behalf in this state; **or**
 - That all persons having or claiming an estate or interest in, or lien or encumbrance on, the real property described in the complaint, or under any other title or interest, and not in possession, nor appearing of record in the office of the register of deeds, the clerk of the district court, or the

county auditor of the county in which the real property is situated, to have such claim, title or interest in the property, are proceeded against as unknown persons defendant under N.D.C.C. Chs. 32-17 or 32-19, and stating facts necessary to satisfy the requirements of those chapters.

The signature on the affidavit must be witnessed by a notary public or North Dakota clerk of court. Do not complete the signature and notary sections until you are in the presence of a notary public or North Dakota clerk of court.

- The Proof of Attempt(s) to Serve Defendant/Respondent by Mail, Personal Service, or Obtaining Defendant's/Respondent's Signature:
 - Provide documentation of the failed attempts at service.

Step Four: Publish the summons in a newspaper in the North Dakota county where the civil action is pending. If no newspaper is published in that county, publication may be made in a newspaper having general circulation in the county.

- Service by publication is made by publishing the summons three (3) times, once each week for three (3) consecutive weeks.
- First publication of the summons must be made within sixty (60) days after filing the affidavit for service by publication

Service by publication is complete fifteen (15) days after the first publication of the summons.

Step Five: Mail or deliver a copy of the summons and complaint to the Defendant's/Respondent's last reasonably ascertainable address.

- A copy of the summons and complaint must be deposited in a post office or with a third-party commercial carrier in North Dakota, postage or shipping prepaid, and directed to the Defendant/Respondent to be served at the Defendant's/Respondent's last reasonably ascertainable address.
- The copy of the summons and complaint must be mailed or delivered after the filing of the affidavit for service by publication and no later than fourteen (14) days after the first publication of the summons in the newspaper in the county where the action is pending.
- The person who deposited the copy of the summons and complaint in a post office or with a third-party commercial carrier in North Dakota must complete an affidavit of service.

Step Six: File proof of service with the clerk of court in the county where the action is pending. File the affidavit of publication from Step Four and the affidavit of service from Step Five.